

courts of the United States." The rule permits a new trial "if substantial errors were made in admitting or excluding evidence, or in charging the jury, or in misconduct, or because a material issue was improperly submitted or withdrawn from a jury.... This list is not exhaustive, as a trial court may order a new trial 'for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States.' Despite this great latitude, it is well settled that the trial judge is to 'abstain from interfering with the verdict unless' upholding it would constitute a 'miscarriage of justice.' The federal rules direct the court to 'disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.'" *Sharkey v. Lasmo (Aul Ltd.)*, 55 F. Supp. 2d 279, 289 (S.D.N.Y. 1999) (citations omitted).

Thus, under Rule 59(a), "A motion for new trial will be granted when a miscarriage of justice occurred in the first trial." *Larson v. Farmers Co-op. Elevator of Buffalo Center, Iowa*, 211 F.3d 1089, 1095 (8th Cir. 2000); accord *Gaspar v. Wal-Mart Stores, Inc.*, 270 F.3d 1196, 1199 (8th Cir. 2001). "[A] movant should not use Rule 59 merely to relitigate previously-decided matters." *LiButti v. United States*, 986 F. Supp. 114, 117 (N.D.N.Y. 1997), *rev'd on other grounds*, 178 F.3d 114 (2d Cir. 1999).

[A] trial court should be most reluctant to set aside that which it has previously decided unless convinced that it was based on a mistake of fact or clear error of law, or that refusal to revisit the earlier decision would work a manifest injustice.... Certainly, a trial court should not grant a new trial simply because, like the proverbial second bite at the apple, the losing party believes it can present a better case if afforded another chance.

Libutti v. United States, 178 F.3d at 118-19 (citing *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983)).

In this motion, Sacred Heart basically contends the jury's resolution of the breach of contract claims in favor of AHN is not supported by the evidence. The defendant does not contend the jury was improperly instructed, and the court believes the jury instructions were correct. Rather, defendant appears to contend that the jury did not understand, disobeyed, or misapplied the instructions.

The evidence presented in this case, depending on which evidence the jury found credible, would support a variety of verdicts. The verdict was not contrary to the evidence or the law, and upholding this jury verdict will not constitute a miscarriage of justice. The court finds that Sacred Heart is not entitled to relief under Rule 59.

Accordingly,

IT IS ORDERED that Sacred Heart's Motion for Partial New Trial [181] is denied.

DATED October 26, 2006.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**